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IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-91

R. W. JONES, Sr., et al.,

Petitioners,

vs.

CHARLES T. WOLF, et al.,

*Respondents.*ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**AMICUS CURIAE BRIEF OF THE
ANGLICAN CATHOLIC CHURCH**

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The Anglican Catholic Church respectfully submits this brief in support of the position of the Respondents in this case. The filing of this brief as *amicus curiae* has been consented to by all the parties under Rule 42(2) of this Court and such consents have been filed with the Clerk of the Court.

INTEREST OF AMICUS CURIAE

The Anglican Catholic Church is a newly formed church organization consisting of some 200 congregations with approximately 25,000 communicants, most of whom are former members of the Protestant Episcopal Church in the United States of America. As a result of certain fundamental disagreements with the policies of the Protestant Episcopal Church, substantial numbers of local Episcopal parishes terminated their affiliations with that church and joined to establish the Anglican Catholic Church. Thereafter, lawsuits were instituted by various Protestant Episcopal dioceses seeking to gain control of the properties of these various withdrawing parishes.¹ The plaintiffs in many of these cases are asserting a legal position similar to that asserted by the Petitioners in the instant case. Therefore the Court's decision in the pending matter will have a profound effect upon the outcome of these suits and upon the future of the Anglican Catholic Church.

It is the position of the undersigned *amicus* that this Court should affirm the decision of the Georgia Supreme Court and in so doing reaffirm the principle that, except as otherwise explicitly provided by contract or trust arrangement, church property disputes are to be resolved *only* through the application of traditional principles of corporate and private association law and not on the basis of hierarchical determinations of "true" adherence to certain religious doctrines.

1. See e.g., *The Protestant Episcopal Church in the Diocese of New Jersey v. Graves*, 161 N.J. Super. 230 (Ch. Div. 1978); *The Diocese of Newark, et al. v. William F. Burns, et al.*, Docket No. C-4164-77 (N.J. Super. Ct., Ch. Div., filed July, 1978); *Protestant Episcopal Church v. Barker*, Nos. C188907, C189571, C189572, C190652 (Los Angeles, Calif. Super. Ct., filed February, 1977); *The Diocese of Southwestern Virginia of the Protestant Episcopal Church in the United States of America v. Wyckoff*, Chancery Bill No. 3748 (Amherst Cty., Va. Cir. Ct., 1978).

COUNTER-STATEMENT OF QUESTION PRESENTED

Whether, in the conceded absence of any contractual or trust relationship giving a hierarchical church body the power to control the property of local congregations, the purely doctrinal decisions of a hierarchy may nevertheless frustrate the will of a majority of the members of a local congregation to disaffiliate from their church denomination and retain control over their congregational property.

ARGUMENT

Hierarchical structure of a church organization alone is not a sufficient basis for requiring civil courts to defer to the decisions of a hierarchy affecting the control of local congregation property in the absence of an agreement or trust arrangement which binds the congregation to accept the decisions of the hierarchy.

Petitioners' basic position before this Court is that, solely because of the hierarchical structure of The Presbyterian Church in the United States ("TPCUS"), the property of the Vineville Presbyterian Church ("VPC") is not subject to the control of its membership and trustees in accordance with traditional principles of corporate and private association law. Rather, Petitioners argue that only the minority of members of VPC determined by the hierarchy, as an ecclesiastical matter, to be adherents to the "true" doctrines of the church denomination have the right to control the property of VPC.

The undersigned *amicus* contends that hierarchical trappings and structure alone are not sufficient to grant a church hierarchy the power to use religious doctrine to overrule the decisions of the duly elected trustees or the membership of a local congregation with respect to such congregation's property. The rulings of a hierarchical body as to matters of control over local church property take on the character of "religious rulings" only when the nature of the relationship between the individual congregation and the general church is such that it is clear that authority over such property has been granted to the general church by agreement or otherwise.

The fallacy of Petitioners' position is illustrated by the hypothetical situation in which the constitution of a

hierarchically structured church specifically reserves to local congregational bodies the right to disaffiliate and retain control of their properties on the basis of a simple vote of the membership. Surely no court in such a situation would permit the hierarchy to frustrate the will of the local church and the terms of the church constitution.²

In those cases in which courts have spoken in terms of deferring to "hierarchical decisions," the reference was only a label for a finding that in the particular instance the hierarchy had been given, by agreement as set forth in the denomination's organic documents or as the result of a trust arrangement or otherwise, the authority to decide the issue as a religious question. The classic formulation of this concept is found in *Watson v. Jones*, 80 U.S. 679 (1871), where Justice Miller stated that civil courts are bound to accept the decisions of church judicatories in matters of "discipline or of faith, or ecclesiastical rule, custom or law" only when dealing with church organizations "in which there are superior ecclesiastical tribunals with a *general and ultimate power of control more or less complete* in some supreme judicatory over the whole membership of that general organization." 80 U.S. at 722-723. (Emphasis added.)

Thus Petitioners completely miss the issue when they argue that the Georgia Supreme Court was bound to accept, as an "ecclesiastical matter," the determination of

2. See description of the Presbyterian Church in America and its specific affirmation in its *Book of Church Order* of congregational control of church property set forth at page 4 of Brief *Amicus Curiae* filed in this case by Dr. G. Aiken Taylor, Moderator of the Presbyterian Church in America in opposition to Petition for Writ of Certiorari. See also opinion of Court of Appeals of Maryland in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968) in which that court described the Protestant Episcopal Church as being hierarchical in certain respects but congregational with respect to local church property. 241 A.2d at 699.

the Commission appointed by the Augusta-Macon Presbytery as to the identity of the "true congregation" of VPC. If VPC did not surrender to TPCUS its power as a separately organized entity to act in accordance with its own constitution and by-laws to terminate its relationship with TPCUS, the Commission's ecclesiastical determination as to the identity of the "true congregation" is totally irrelevant. Only if the substance, not just the form, of the relationship between VPC and TPCUS is such that the local congregation is, by agreement or otherwise, forever bound to the general church, does the ecclesiastical determination of the identity of the true church members become relevant.

It is precisely because of Petitioners' repeated attempt to describe the controversy as a "religious" one and their failure to deal with the basic issue of the particular nature of the relationship of Vineville Presbyterian Church to TPCUS, that Petitioner's reliance upon *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) is misplaced. *Serbian* involved a struggle for control within the church organization itself. The issue was not between the church and persons who no longer claimed to be a part of the church, but rather involved conflicting claims asserted by persons all of whom were claiming to be part of the same church organization. It was in that factual context, involving the right to determine a bishop of the church, that this Court held that the Constitution requires civil courts to accept the decisions of ecclesiastical tribunals as binding. One can suggest no clearer example of an issue which must be decided by a church body than the identity of its own clergy, and yet Petitioners would have this Court treat a dispute as to the right to property in the same manner as a dispute over the right to an ecclesiastical office.

In the instant case, however, the issue is not between parties claiming membership in the same church organization. The Respondents have openly terminated the affiliation between themselves and TPCUS. They in no way pretend to be part of TPCUS or "true members" of such church. The ecclesiastical question of whether others are "true members" of the church is beside the point. The issue quite simply is the nature of the pre-existing relationship between the local church entity and the general church and the powers which were granted to the general church with respect to the local entity and its properties. The decision as to the nature of such relationship is to be made by the courts and not by the hierarchical body. As Justice White said in his concurring opinion in *Serbian*:

"Major predicates for the Court's opinion are that the Serbian Orthodox Church is a hierarchical church and the American and Canadian diocese, involved here, is part of that church. These basic issues are for the court's ultimate decision, and the fact that church authorities may render their opinions on them does not foreclose the courts from coming to their independent judgment." 426 U.S. at 725.

The outcome in *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968), vacated and remanded, 393 U.S. 528 (1969), reaffirmed, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed, 396 U.S. 367 (1970), demonstrates that this Court has previously refused to accept Petitioners' argument in Point II of their brief that there must be complete and abject deference to every decision of a hierarchical body. Petitioners describe the local churches in that case as "congregational in nature and wholly independent of the Eldership [hierarchy], at least insofar as their individual property was concerned." (Pet. Brief at 20). In fact, the Maryland Court of Appeals stated that the church had

"some and perhaps more of the characteristics of the presbyterian polity in that there is a governing body beyond that of the local congregation consisting of elders, the ordained ministerial elders (teaching elders) and the elected lay persons (ruling elders) and a general eldership over all the intermediate elderships." 241 A.2d at 699.

Nevertheless, in spite of the obvious hierarchical structure, the court went on to find that an examination of the constitutions of the entities involved and other relevant documents demonstrated that the local congregations were completely independent of the hierarchy with respect to the use and control of property. The Maryland court reaffirmed its finding upon rehearing and this Court dismissed the appeal noting specifically the Maryland court's reliance "upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property." 396 U.S. at 367. See also this Court's refusal to disturb the Georgia Supreme Court's ruling against the hierarchy in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Church*, 396 U.S. 1041 (1970).

The Supreme Court of Georgia's analysis of the present case in terms of the absence of an "implied trust" in favor of the general church was simply another means of stating that there was nothing in the relationship between VPC and TPCUS which gave TPCUS the right to assert ecclesiastical control over VPC's property. *Jones v. Wolf*, 241 Ga. 208, 243 S.E.2d 860, 863-864 (1978). Its discussion of the "property rights" of the general church and the absence of more than a "mere connectional relationship between the local and general church," was in fact a finding that the relationship between TPCUS and VPC did not meet the standard set down in *Watson* that

the hierarchy must have "a general and ultimate power of control more or less complete" before a dispute over control of property may be treated as a religious controversy. *Id.* at 864.

The analysis by the Georgia court becomes more apparent when the decision is read in conjunction with the earlier opinion of the same court in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322 (1976), which is cited and relied upon extensively by the court in its opinion in the instant case. Not surprisingly, Petitioners do not cite *Carnes*, even though that case involved a factual situation similar in all but one vital respect to the instant case and resulted in a finding for the general church against a secessionist United Methodist Church group. In *Carnes*, the Georgia Supreme Court reviewed the *Book of Discipline* of The United Methodist Church and found that the constitution of that denomination specifically and unequivocally provided that all property held by any local church was held in trust for the use and benefit of both the local church and the general church. Accordingly, the court held that the local church had entered into a binding relationship with its parent church by reason of the existence of trust provisions in its constitution, by-laws, rules and other documents pertaining to the control of property. 222 S.E.2d at 328.

In the instant case, however, after analyzing the Presbyterian *Book of Church Order*, the Georgia Supreme Court found no language of trust similar to that found in The United Methodist Church *Book of Discipline*, i.e., the court found nothing in the connectional relationship which indicated any surrender to the ecclesiastical authority of control over the local church property. The court characterized the sections of the *Book of Church Order* cited by the Petitioners to show hierarchical authority, as

dealing "with faith and the internal structure of the church" but not "with property rights." 243 S.E.2d at 863.

The rationale for the approach taken by the Georgia court that there must be an inquiry in each case into the substance and nature of the hierarchical relationship is based on traditional principles of contract, private association and trust law. Implicit in these principles is the concept that in order to permit parties to arrange their affairs, as a matter of fairness, they should be placed on notice as to the nature of the controls which may be exercised by the hierarchy over the properties of the local church organization. In the absence of an explicit provision in the denomination's constitution or other organic documents granting the general church an interest in the properties of the local church, the local church organization should be free to chart its own course as a separate entity in accordance with traditional doctrines of corporate and private association law.

Petitioners argue that the doctrine of "majority rule" could lead to takeovers of local churches through the concerted efforts of a number of individuals joining a congregation and acting to oust the original members from control. (Pet. Brief at 35-36.) Petitioners conveniently avoid taking notice of the fact that this is precisely the risk which "congregational" churches face all the time. What is there in the nature of a church affiliated with a hierarchically structured denomination that should insulate it from the effects of membership activity? If hierarchically structured denominations wish to limit the freedom of choice of local church entities and safeguard themselves against the possible use of local church properties for purposes not sanctioned by the hierarchy, they should follow the suggestion made by Justice Brennan in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1968), and "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Id.* at 449.

abeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1968), and "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Id.* at 449.

This Court has on several occasions expressed its unhappiness with the fact that disputes having their origins in ecclesiastical controversies are brought to the civil courts for resolution, and has suggested in no uncertain terms that church organizations and individuals structure their relationships so that courts need not be involved in such disputes. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Church, supra*, at 449; *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, supra*, at 368 (concurring opinion). If Petitioners fear the type of "take-over" described in their brief, and if they wish to prevent future defections of the kind that took place in the instant case, then it is incumbent upon Petitioners and others involved in similarly structured church organizations to restrict the use of local congregational property to purposes sanctioned by the hierarchy through express trusts or by causing title to be vested in the hierarchy.

It is submitted that the ~~opinions~~ of the Georgia Supreme Court in its opinions ~~in~~ in the instant case and in the more recent case of *Carnes v. Wilburn*, 241 Ga. 322, 245 S.E.2d 273 (1978) is based precisely on the approach suggested by Justice Brennan in *Blue Hull* that church organizations must structure their relationships to accomplish their desired ends. In the case of churches which exert the effort to obtain the consent of their various constituent members to a relationship which binds the local churches to the hierarchy, courts, as in *Carnes*, should enforce such a relationship under the very principles of "simple contract and private association law"

cited by Petitioners. (Pet. Brief at 29.) As Mr. Justice Brandeis wrote in *Gonzalez v. Archbishop*, 280 U.S. 1 (1929):

"In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, *because the parties in interest made them so by contract or otherwise.*" 280 U.S. at 16. (Emphasis added.)

Where, however, there is no basis for finding the contractual or associational relationship, sometimes referred to as an "implied trust" in favor of the hierarchy, the courts, consistent with the directives of this Court to avoid ecclesiastical disputes, must follow traditional principles of title and corporate democracy in resolving the conflicting rights to church property.³

Were this Court to change the principles that it set down in *Blue Hull* and reiterated in *Sharpsburg*, and adopt the thesis advanced by Petitioners that the decisions of the hierarchical body must in all cases be controlling, it would in fact be moving right into the area that it has prohibited the courts from entering, i.e. the area of ecclesiastical disputes. Acceptance of the Petitioners' argument would place the courts in the posture of enforcing the doctrines and disciplines of the hierarchy. The power of the civil courts would thereby be used to produce religious con-

3. The grant to the hierarchy of the power to control the local church organization must be clearly expressed and must not depend upon the resolution of conflicting interpretations of religious law. As Justice Brennan stated in *Sharpsburg*:

"In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity." 396 U.S. at 370.

formity by threatening congregations with loss of their properties, which in most cases the local congregants have provided through their voluntary contributions, in the event congregants deviated from the decrees of the ecclesiastical authorities. The effect upon the exercise of religious freedom and the hazards of "inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern" inherent in such an approach are patent. *Blue Hull, supra*, 393 U.S. at 449. The Court would be establishing and enforcing state controls which the parties themselves did not choose to incorporate in their church structure. We would be witnessing the very "employment of organs of government for essentially religious purposes" that was proscribed by the decision in *Blue Hull, Ibid.*

In this regard, two comments by the Maryland Court of Appeals in the second *Sharpsburg* opinion are of particular relevance to the case at bar:

"It is apparent that the Constitution of neither Eldership contains *any prohibition against the withdrawal* from the Eldership of a local congregation nor is there any provision for loss or forfeiture of property by a local congregation if it does withdraw from the Eldership. As we also pointed out in our first opinion, a denomination *may* provide in its constitution for a prohibition against withdrawal and for a forfeiture of local church property in the event of a withdrawal, but neither Eldership in the present case made any such provision. 254 A.2d at 168. (Emphasis that of the court.)

* * *

We do not understand that the decision in *Hull* requires the State equity courts to provide effective discipline and control of a denomination over its clergy or to maintain that denomination's "purity of doctrine." As we see it, this would be "establishment of

religion" with a vengeance, and under neither the Maryland law nor under the prohibitions of the First Amendment are we permitted to do this. We have no right to prevent the local congregations from separating from the Eldership and from refusing to accept the ministers appointed by the Eldership. To do this would deny to the members of the local congregation *their* freedom of religion and would in effect put the judicial power of the State behind the enforcement of the doctrine and discipline of the Eldership thus, in effect, "establishing" the religion promulgated by the Eldership. This we are forbidden to do. 254 A.2d at 170. (Emphasis that of the court.)

CONCLUSION

This Court's opinions in *Blue Hull* and *Sharpsburg* have placed hierarchical church bodies on notice that if they wish to have the authority to decide church property disputes they must specifically provide for that authority in their basic organizational documents. That power may not be usurped by ecclesiastical tribunals by simply characterizing a dispute as a religious controversy. In the instant case, TPCUS failed to respond to the Court's earlier opinions and did not structure its relationships with VPC in such a manner as to reserve to itself the right to decide controversies relating to the control of the local church property. Accordingly, this Court must apply traditional principles of corporation and private association law and affirm the decision of the Georgia Supreme Court in favor of Respondents.

Respectfully submitted,

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